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**Regional basis for transboundary protection of
the Great Lakes oil resource**

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1.1 Background

Africa is a resource-rich continent but continues to suffer abject poverty, disease, political instability and innumerable socio-economic problems. Even though Africa's trade with the international world has increased, with the value of her exports quadrupling, the continent only benefits a fraction from international trade. Africa's chief export to date is oil, constituting 57% of her exportsⁱ. With the discovery of oil in other parts of Africa like Ghana, Uganda, Kenya, Ethiopia, DRC, Sierra Leone, Sao Tome and Principe, Africa's oil exports are expected to increase.

The Great Lakes Region, comprising Burundi, DRC, Kenya, Rwanda, Tanzania and Uganda is arguably the most resource-rich region in Africa.

- The Great Lakes Region is a resource-rich area that has been plagued with conflict
- The discovery of oil in the region is likely to exacerbate conflict
- International human rights law is clear on state responsibilities and obligations under treaties
- Regional human rights instruments emphasize the protection of communities and the environment even as states exploit resources

The Great Lakes region resources have for decades been a source of instability rather than prosperityⁱⁱ. The discovery of oil resources in the region is expected to fuel even more conflict. Africa Institute for Energy Governance, under its three year Transboundary project started in 2013 and supported by IUCN Netherlands, works with Civil Society Organisations from Burundi, DRC, Rwanda and Uganda to promote good governance in the management and exploitation of shared fisheries and oil resources. The hope is that with time all the countries of the Great Lakes region will come on board and be part of efforts to collectively protect regional resources

The Great Lakes region is not only a delicate area because of its resources like oil and fresh water lakes- Albert, Kivu, Edward and Tanganyika- but also its stunning ecological diversity. The region boasts of having the world's most

spectacular animal and plant species, including 52% of all African birds and 39% of African mammals found in the Albertine alone. Exploration in what experts predict could be one of the biggest oil finds in historyⁱⁱⁱ has put nature on a collision course with environmental and community needs.

This policy brief summarizes the regional human rights treaties for transboundary protection of oil resources in the Great Lakes region, highlighting regional human rights and environmental treaties under which countries of the region are obligated to work together to protect their resources for the benefit of the people in the region, especially the local communities.

1.2 The problem

While the Great Lakes Region is blessed with vast resources, these resources have mostly been a curse to the communities and ordinary men and women in this area. The resources have fuelled conflict and exacerbated poverty. In the Great Lakes region, abuse of human rights, intimidation, lack of accountability and poor governance reigns. With the newly discovered oil in the region, critics fear that the situation will only get worse as governments struggle to exploit the oil resources regardless of the costs to the community and the environment.

There exist several regional human rights and environmental treaties that could help foster Regional Cooperation in the wake of oil exploration; and also ensure that the oil resource is used for the benefit of the people. However, these regional instruments have mostly been ignored and promises to move towards regional integration left only on paper. In the meantime, communities live in uncertainty about their lives and livelihoods. The environment and rich biodiversity is now at a greater threat than before and people seem powerless to stop the rumbling tide. Without the necessary joint intervention, exploration in the Great Lakes region is likely to leave countries and communities economically and socially worse off.

1.3 Objectives of the policy brief

To highlight the regional basis of transboundary protection of oil resources

1.4 Regional Human Rights Instruments and Transboundary oil protection

The municipal law governing treaties in Uganda is the Constitution 1995 and The Ratification of Treaties Act Cap 204. Part of Uganda's foreign policy is to respect international law and treaty obligations. Treaty law overrides municipal law and Ugandan courts are expected to interpret laws in a way that respects treaty obligations. The Vienna Convention on the Law of Treaties provides that treaty obligations must be respected and observed in good faith. Domestic law must therefore be harmonized with human rights instruments, interpreted progressively, and evoked to foster transboundary protection of oil resources in the Great Lakes region.

Important to note is that the countries in the Great Lakes region all belong to regional trade blocks like The Common Market for Eastern and Southern Africa and The East African Community and have ratified these treaties. They are also part of The International Conference on The Great Lakes Region. In addition, they have also entered into multilateral and bilateral agreements with each other. These agreements are enforceable under international law and are an important tool for transboundary resource protection. For example in 2007, Uganda entered into an agreement with DRC following a conflict over ownership of Rukwanzi Island- a conflict that led to loss of lives. The agreement laid down a framework for sharing Congo and Uganda's transboundary resources and calmed down the unrest. Such agreements are informed by prior regional instruments and ought to be publicized and respected. This section summarizes the various regional human rights instruments that require Regional Corporation, fair trade and, above all, putting the interests of the African communities first.

1.4.1 The African Charter on Human and people's Rights

Also known as the Banjul Charter and incepted in 1979, the spirit of this major regional human rights instrument is to fight against all forms of oppression of African people and ensure enjoyment of not just individual rights but also cultural and community rights.

The Banjul charter is a unique human rights instrument and was the first to recognize the indivisibility of rights stating in its preamble that:

“Civil and political rights cannot be dissociated with economic, social and cultural rights in their conception as well as universality and that the satisfaction of social, economic and cultural rights is a guarantee for enjoyment of civil and political rights.”

All African countries, except Morocco, are signatory to the Charter that exclusively recognizes the customs and communal nature of African societies. Article 21 (1) of the Charter provides for the right of African states to freely dispose of their wealth for the good of the people. It reads Thus:

“All people shall freely dispose of their wealth and natural resources. The right shall be exercised in the exclusive interest of the people.

Article 21(2) and (3) further protects the rights of the people to recover adequate compensation in case they are deprived of property or the property is damaged. Under Article 21(3) the free disposal of property must be exercised in line with International instruments and standards. Clause 3 emphasizes the need to honour international obligations, promote international economic cooperation, mutual respect and equitable exchange.

Further under Article 21 (4):

“State parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view of strengthening African unity and solidarity.” Under Clause 5:

“State parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources. The Charter also guarantees the right to peace and security.

Under Article 1 of the Charter, state parties are required to enact legislation to give it effect. Aside from directly protecting the rights of African communities to benefit from

their resources, the Charter also protects tenet rights like the right to equality and freedom from discrimination, the right to life and integrity of the person, the right to dignity and freedom from inhuman degrading treatment, the right to access to information, freedom of expression, right to health and freedom of assembly. These rights are routinely violated at the boundaries of Great Lakes Region countries that are resource rich.

For instance, NGOs operating in these areas have been warned and threatened with deregistration, communities have attacked and killed each other at the Uganda-DRC boarder while lots of people live in absolute poverty without basics like clean water and access to well facilitated health centers. The current situation in the Great Lakes region undermines the spirit of the Banjul Charter and government leaders, through their inaction, have rendered the vows made in 1979 irrelevant.

Important to note is that generally the Banjul Charter has been ignored in major human rights discourses world over because of the absence of an African Court on Human and people's Rights and an inactive Human Rights Commission. The general African human Rights System has been called a toothless barking dog in spite of its well meaning and progressive provisions- particularly on the rights of communities.

1.4.2The African Convention on the Conservation of nature and Natural resources

Based on the Banjul Charter, this convention highlights state responsibility to preserve resources for its people. Art 11 (1) of the Treaty recognizes that development activities may have negative impacts on the environment, often leading to degradation and depletion of natural resources and that a clean and healthy environment is a prerequisite for sustainable development. This is reflected in Development Objective 1.15: To establish sustainable environmental management and economic utilization of resources.

1.4.3 Treaty for the establishment of The East African Community

The treaty was signed in 1999 and came into force in 2000. It established the East African Community. Uganda, Kenya, Rwanda, Burundi and Tanzania all pledged to

establish more cooperative commercial and political relations for their cumulative 133 million citizens. The treaty contains noble objectives on promoting technological, judicial, social and cultural development in the region as well as mainstreaming the interests of minority members of the community like women.

The EAC Treaty provides for joint management and utilization of natural resources within the Community for the mutual benefit of the Partner States. It also provides for joint development and adoption of harmonized common policies and strategies for sustainable management of transboundary natural resources within the Community. The Treaty therefore provides the setting and premise for instituting regional guidelines for the management of transboundary ecosystems in East Africa, and the Partner States have initiated a number of processes and activities to implement these provisions. It is in this view that, the EAC Secretariat was developed as well as Regional Guidelines on Environmental Impact Assessment of shared Ecosystems in Africa.

1.4.4 Protocol on Environment and natural resources management

This protocol, like the African Convention on the Preservation of Nature and Natural Resources, recognizes that development activities can have a negative impact on the environment. It aims at promoting cross Boarder Corporation in resource management, including exchange of research, coordination of activities to protect the environment from degradation and adopting common management policies to control transboundary movement of toxic chemicals.

Both the Treaty on the Establishment of the East African Community and the protocol of natural resource management were enacted in the spirit of managing and sharing resources equitably, for the benefit of communities and without conflict.

Conclusion and Recommendations

Transboundary management of resources is especially important in the wake of the discovery of oil in Africa considering the continent's history of instability, the delicate natural environment and the notorious oil curse. It is therefore crucial that governments

review their commitments under these regional human rights instruments and take steps to implement them in protection of oil resources in the region.

African governments' reluctance to honour their commitments under regional and international treaties was demonstrated after the International Court of Justice 2005 decision that found Uganda guilty of violation of International Human Rights law by plundering Congo's natural and human resources. Ideally, it is such judgments that should act as a guide to governments in the region to enforce their commitments under the regional human rights instruments.

Unfortunately, Uganda has to date not honoured the judgment and has failed to pay the 10 billion compensation. Thus it seems that governments in the great lakes region are many times oblivious of the duty to respect the region's resources and use them in a way that will promote peace and harmony rather than cause acrimony and poverty in the region.

The following should thus be undertaken to ensure that the continent moves beyond fantastic ideals on paper and make transboundary resource management a reality:

- Enactment of harmonized principles, regulations and laws to guide transboundary oil resource protection and management by government of the affected countries
- Collaboration of civil society organizations from the different countries in the Great Lakes region so as to strengthen advocacy efforts
- Working with media to put the discourse on transboundary oil resource management in the public sphere and to inform the public of what entails and what they stand to benefit
- Working with oil companies and dialoguing on the importance of transboundary resource management and obligations and regional instruments and coming up with clear roles that these companies have to play in these efforts
- Working with community members and leaders to put them at the centre of transboundary resource management and empowering them to advocate for human rights and demand for accountability.

- Lobbying government to strengthen transboundary collaborations and to honour provisions of regional instruments on transboundary resource management and protection of citizens.
- Establishing conflict resolution mechanisms on oil at regional level- For example courts, regional tribunals and commissions.

ⁱKPMG, Oil and Gas in Africa, Available at: <https://www.kpmg.com/Africa/en/IssuesAndInsights/Articles-Publications/Documents/Oil%20and%20Gas%20in%20Africa.pdf>

ⁱⁱUN, Department of political Affairs report, Available at:
http://www.un.org/wcm/content/site/undpa/main/activities_by_region/africa/pid/24261

ⁱⁱⁱSupra, no i